S.B. CIVIL WRIT PETITION NO.1793/2007
Industrial Area Manufacturers Association & Ors.
Vs.
Jaipur Vidyut Vitran Nigam Ltd. & Ors.

S.B. CIVIL WRIT PETITION NO.4423/2006
Alwar Zila Laghu Udyog Sangh
Vs.
Jaipur Vidyut Vitran Nigam Ltd. & Ors.

Date of order : 23.5.2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri M.M. Ranjan]
Shri R.K. Mathur]for the petitioners.
Shri Sanjeev Prakash Sharma for the respondents.

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REPORTABLE

Heard learned counsel for the parties.

Aforesaid two writ petitions have been filed with the prayer that the action of the respondents in requiring the petitioners to make the changeover

from LT to HT supply and accordingly procure such electricity supply on 11 KV within one month and according to Note -1 below condition no.2 of Terms and Conditions for Supply of Electricity-2004, provide transformer sub-station and allied accessories for taking prescribed voltage supply at his cost, be declared illegal and quashed and set aside.

Alwar Zila Laghu Udyog Sangh had earlier approached the Corporate Level Settlement Committee under directions of this Court in their earlier writ petition No.703/2006 decided on 30.1.2006. The Settlement Committee vide its order dated 25.4.2006 declared that no settlement seems tenable and therefore no settlement could be arrived at. The petitioner has,

therefore, challenged that order in the present proceedings as also the notice dated 4.5.2005 and subsequent notice sent to one of their members by Alwar Discomm dated 23.5.2006 requiring them to provide transformer sub-station and allied accesories for taking supply of the prescribed voltage.

The other writ petition being SBCWP no.1793/2007 has been filed by Industrial Area Manufacturers Association on behalf of its member with a similar grievance with an additional prayer that the respondents be directed to adhere to their earlier notification dated 24.10.2003.

I have heard Shri M.M. Ranjan and Shri R.K. Mathur, learned counsel for the petitioners and Shri S.P. Sharma, learned

counsel for the respondents.

Learned counsel for the petitioners have argued that the Jaipur Vidyut Vitran Nigam Limited had issued a notification on 24.10.2003, clause (ix) of which provides that in case the old MIP consumers to whom connections were released prior to 7.8.1990, if extends his connected load, above 60 HP shall not be entitled to get any benefit admissible to MIP consumers to whom connections were released prior to 7.8.1990. This would mean that the consumer will have to install his own distribution transformer or if he opts for Nigam's transfermer on rent he will be provided with exclusive transformer for him with metering on HT side. In such a case the transformer rent

will be charged at par with rent prescribed for consumers to whom connections were released after 7.8.1990 prescribed vide order dated 20.11.2001. Learned counsel also argued that in clause (vi) of the aforesaid notification, there was a provision that old MIP connections released prior to 7.8.1990 having connection on HT side, and in whose cases the recorded demand is less than 50 KVA, are to be treated as LT consumers in accordance with the provisions of tarrif and in such cases the transformer rent and transformation losses @ 3% would not be charged. It was submitted that there is no such similar provision in the existing system.

Learned counsel therefore aruged that the members of the petitioner

Association are still prepared to abide by the conditions enumeraged in the notification dated 24.10.2003, and they cannot be forced to install and provide transformer sub-station and allied accessories. They are ready to pay the rental as directed by the respondents earlier.

On the other hand, Shri S.P. Sharma, learned counsel for the respondents opposed the writ petition and argued that the aforesaid notification is no longer valid because on petitions being filed by the Generating Companies, the Rajasthan Electricity Regulatory Commission (RERC) in exercise of powers conferred on it by virtue of Sections 62 and 64 of the Electricity Act 2003 has

laid down the new Tariff for Supply of Electricity- 2004. According to clause (13) of which, changeover from LT to HT supply shall be effected if maximum demand as per MDI exceeds 50 KVA more than two times in a financial year. It was submitted that the consumer in such a case shall have to take supply on 11 KV within the notice period of one month to be issued by Assistant Engineer concerned after the maximum demand exceeded third time, failing which, his connection shall be disconnected. It was submitted that clause (20) of the Tariff-2004 provides that in case of any doubt regarding applicability of these tariff, the matter shall be referred to the Managing Director, Jaipur Discom for decision and if the matter is not resolved then it

shall be referred to the RERC whose decision shall be binding. Shri Sharma also referred to the Terms and Conditions For Supply of Electricity, which have been issued by the RERC in exercise of powers conferred upon it by Sections 43 to 48, 50, 55 and 56 of the Electricity Act, 2003. In particular, he relied on Note-(i) of clause (2) which runs as under :-

> "Note (i)- If any existing connection is at variance from table above it shall be changed only at consumer's request except in case of a consumer availing LT supply who falls in the category of HT supply or availing HT supply who falls in the category of EHT supply. In such a case, the Nigam will service a notice of 30 days to the consumer and the consumer will have to switch over to prescribed voltage of supply wherever feasible. He will provide transformer sub-station and allied accessories for

> taking prescribed voltage of supply, at his cost."

He also referred to Section 86(f) of the Electricity Act, 2003 and submitted that in case of any dispute, the Regulatory Commission is empowered to adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration.

Having heard learned counsel for the parties and perused the material on record, I find that although clause (13) of the Tariff for Supply of Electricity provides for changeover from LT to HT supply in case such MDI exceeds 50 KVA more than two times in a financial year and when it exceeds third time in a financial year, the Assistant Engineer concerned may by notice require him to

shift from LT to HT and also provide transformer sub-station and allied accessories for taking prescribed voltage supply at his cost. Unlike in the old arrangement where there was converse provision i.e. if a consumer having supply on HT side, where the recorded demand is recorded less than 50 KVA, in that event, they were entitled to be treated LT consumers, there is no such similar provision brought to my notice in the Terms and Conditions for Supply of Electricity- 2004. Although Shri S.P. Sharma, learned counsel for the respondents ventured to explain that such provision should be read in clause (h) of Condition no.2 – of the Terms and Conditions 2004 but he could not make it clear as to if in a given cases

electricity supply on HT side for reasonably long period remains less than 50 KVA, whether consequenes similar to the one given in clause (vi) of the notification dated 24.10.2003 would follow or in that case, the consumer would have an option to revert back to LT side.

In my considered view, however, all these disputes require expert determination and also, to some extent, examination of the correctness and wisdom of the tariff of electrictiy and terms and conditions (supra), which in view of clause (f) of Section 86 of the Electricity Act 2003 and clause (20) of the Tariff of 2004, lies within the domain of RERC. The petitioners are, therefore, directed to approach the RERC

within a period of six weeks. Interim orders obtaining in these cases shall continue and be valid upto 15.7.2007 and any further interim measure in these cases shall abide by the directions of the RERC.

The petitions are accordingly disposed of.

(MOHAMMAD RAFIQ), J.

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